

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BOSTON ALLIANCE OF GAY, LESBIAN,
BISEXUAL AND TRANSGENDER YOUTH
(BAGLY), *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendants.

Civil Action No.: 1:20-cv-11297-PBS

**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF OF
SCHOLARS OF THE LGBT POPULATION
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

Several scholars who study the lesbian, gay, bisexual, and transgender (“LGBT”) population (“Scholars of the LGBT Population” or “*amici*”)—M. V. Lee Badgett, Andrew R. Flores, Nanette Gartrell, Christy Mallory, Ilan H. Meyer, Brad Sears, Ari Shaw, and Luis A. Vasquez—respectfully move the Court for leave to file a brief *amici curiae* in this matter, attached hereto as Exhibit 1.

In particular, *amici* seek leave to file a brief in opposition to Defendants’ motion to dismiss, filed on October 14, 2020. (ECF No. 21). In this action, Plaintiffs seek declaratory and injunctive relief finding that a regulation pursuant to the Patient Protection and Affordable Care Act adopted by Defendant U.S. Department of Health and Human Services (“HHS”), 85 Fed. Reg. 37,160 (June 19, 2020) (“2020 Rule”), is substantively and procedurally invalid under the Administrative Procedure Act (“APA”).

Amici are scholars of public health, medicine, social sciences, public policy, and law who study the health of LGBT people. *Amici* are affiliated with the Williams Institute, a

research center at the UCLA Law School dedicated to the rigorous study of sexual orientation and gender identity. Research conducted by *amici* has been published on numerous occasions in peer-reviewed scientific journals and other publications. Several federal courts have expressly relied on *amici*'s research and other research by the Williams Institute in connection with legal issues affecting the LGBT community. *See, e.g., Baskin v. Bogan*, 766 F.3d 648, 663, 668 (7th Cir. 2014); *Ely v. Saul*, 2020 WL 2744138, at *13 (D. Ariz. May 27, 2020); *G.M.M. ex rel. Hernandez-Adams v. Kimpson*, 116 F. Supp. 3d 126, 141 (E.D.N.Y. 2015); *Campaign for S. Equality v. Bryant*, 64 F. Supp. 3d 906, 943 n.42 (S.D. Miss. 2014); *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 763-64 (E.D. Mich. 2014), *rev'd*, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010).

Amici can inform the Court about the immediate and long-term effects of discrimination on LGBT health. For example, *amici* have explored a phenomenon known as “minority stress,” in which stigma and prejudice cause LGBT individuals to endure stress over and above the everyday stress all people endure. This excess stress negatively impacts health outcomes and contributes to the health disparities between LGBT people and non-LGBT people. *Amici* have demonstrated that LGBT-supportive policies and social climates have a positive impact on the health and well-being of LGBT people. As a corollary, the removal of nondiscrimination protections—as well as the perception of their removal—have a direct, negative effect on the lives and health of LGBT Americans.

Amici are intimately familiar with the 2020 Rule; the predecessor rule issued by HHS in 2016 during the Obama Administration (“2016 Rule”) which the 2020 Rule purports to repeal; and the administrative record before HHS when it promulgated the 2020 Rule. The Williams Institute submitted a comment letter to HHS that is part of the administrative record,

which *amici* helped prepare. As scholars with extensive expertise in the subject matter area, *amici* believe they can be helpful to the Court in highlighting and explaining the significance of the evidence overlooked or disregarded by HHS in formulating the 2020 Rule.

Accordingly, *amici*'s proposed brief focuses on how the administrative record demonstrated that LGBT people suffer pervasive and widespread discrimination in health coverage and health care, which results in immediate and long-term harms, and contributes to the health disparities between LGBT and non-LGBT Americans.

Dated: New York, New York
November 20, 2020

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* These counsel are not admitted to practice before the District of Massachusetts.

LOCAL RULE 7.1(B) CERTIFICATION

I hereby certify that counsel for *amici curiae* has conferred with counsel for the parties in a good faith effort to narrow or resolve the issues in this motion. Plaintiffs and Defendants consent to *amici*'s request.

/s/ Taleah E. Jennings

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2020, I caused the foregoing motion to be electronically filed with the Clerk of the Court using the CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

/s/ Taleah E. Jennings